IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 15, 2006 Session

VICKI MICHELLE MARLETT
v.
WILLIAM BLAKE THOMASON and OPAL THOMASON

An Appeal from the Chancery Court for Montgomery County
No. MCCHCVMG 03 6 Laurence M. McMillan, Chancellor

No. M2006-00038-COA-R3-CV - Filed on April 5, 2007

This is a contract case. The plaintiff's grandmother died in April 2002. Shortly after the decedent's death, a dispute arose between the parties regarding the validity of the decedent's will. In August 2002, the parties entered into a settlement agreement and release, which distributed the decedent's estate and released all claims relating to the validity of the will or to the distribution of assets in the estate. After entering into this agreement, the plaintiff was appointed administratrix of the decedent's estate. In administering the estate, the plaintiff discovered that, at the time of her death, the decedent owned four substantial financial accounts and that, between February 1997 and January 1999, the defendant was made a joint owner of these accounts. The plaintiff, as administratrix, then filed the instant lawsuit to bring the financial accounts into the estate for distribution to the decedent's intestate heirs. The defendant filed a motion for summary judgment. The trial court granted the motion based on the settlement agreement executed by the parties. The plaintiff now appeals. We reverse and remand, finding that there is a genuine issue of material fact with regard to what was within the contemplation of the parties when the settlement agreement was executed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Reversed and Remanded.

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Mark Walker, Springfield, Tennessee, for Plaintiff/Appellant Vicki Michelle Marlett.

Roger A. Maness, Clarksville, Tennessee, for Defendant/Appellee William Blake Thomason.

OPINION

This case arises out of the death of Flossie Tidwell ("Decedent"), who died on April 21, 2002, at the age of 91. Plaintiff/Appellant Vicki Michelle Marlett ("Ms. Marlett"), a resident of Irving, Texas, is the granddaughter of the Decedent. Ms. Marlett's mother is the Decedent's

daughter and her sole heir at law. Defendant/Appellee William Blake Thomason ("Mr. Thomason") is the Decedent's brother, and is married to Defendant/Appellee Opal Thomason ("Mrs. Thomason"). The Thomasons live in Clarksville, Tennessee. The pertinent facts of this case occurred between 1996 and 2003.

Until November 1996, the Decedent lived in her own home in Old Hickory, Tennessee. In the fall of 1996, the Decedent's physician advised her that she was unable to physically care for herself and that she should not live alone. As a result, the Decedent moved to Clarksville to live with the Thomasons.

In May 1998, the Decedent indicated that she wanted to return to her home in Old Hickory. After some encouragement from Mr. Thomason, however, the Decedent moved to Walking Horse Meadows, an assisted living facility in Clarksville, Tennessee. The Decedent lived there until March 1999, when she fell and bruised her hip. After this incident, the Decedent moved back to the Thomasons' home.

On April 6, 1999, the Decedent purportedly executed a Last Will and Testament. The will was prepared by Mr. Thomason and signed at the Thomasons' home. Under the terms of the will, the Decedent left to Mr. Thomason her "house and lot in Old Hickory, moneys, stocks, bonds, all personal things, all . . . assets, [and] all the estate, except the house and lot in Grand Prairie, Texas." Under the will, the house and lot in Grand Prairie, Texas were devised to Ms. Marlett's mother.[1] The next day, on April 7, 1999, the two witnesses signed the will outside the presence of the Decedent. During the same time period in which the will was purportedly executed, the Decedent signed a power of attorney, making Mr. Thomason her attorney-in-fact.[2]

In July 1999, the Decedent fell again, this time breaking her hip. The Decedent then moved to Spring Meadows, a nursing home in Clarksville, Tennessee, where she lived until her death on April 21, 2002.

Shortly after the death of the Decedent, a dispute arose between the parties regarding the validity of the Decedent's April 6, 1999 will. Four months later, on August 27, 2002, Ms. Marlett, on behalf of herself, her mother, and her brother,[3] entered into a "Settlement Agreement" with Mr. Thomason. Under the terms of the Settlement Agreement, the parties agreed to "settle all claims and causes of action of any kind whatsoever which the parties have or may have relating to the validity of the Last Will and Testament . . . or relating to the distribution of [the Decedent's] estate."

The Settlement Agreement specifically provided for the distribution of the Decedent's real and personal property. The real property was divided among Ms. Marlett, her mother, and her

[1] Ms. Marlett maintains that her mother already owned the house and lot in Grand Prairie, Texas.

[2] Mr. Thomason maintains that he never used the power of attorney.

[3] Marlett signed as attorney-in-fact for her mother and her brother.

brother. Specific items of personalty were divided between Ms. Marlett and Mr. Thomason; the personalty included certain household furnishings and family pictures, two sets of weddings rings, and a watch. In turn, and for additional consideration of $12,500, Mr. Thomason agreed to waive any remaining rights to the estate and property of the Decedent. The Settlement Agreement also included a release, which stated:

> Except for the agreements set forth herein, the parties hereby agree to release, discharge, and forever hold the other harmless from any and all claims, demand, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted in the above case, as of this date, arising from or related to the events and transactions which are the subject matter of this cause. This mutual release runs to the benefit of all attorneys, agents, employees, officers, directors, shareholders, partners, heirs, assigns, and legal representatives of the parties hereto.

The Settlement Agreement did not specify any bank accounts or other financial accounts owned by the Decedent; it stated only that Mr. Thomason would provide Ms. Marlett an accounting of the Decedent's financial accounts.

On November 8, 2002, three months after signing the Settlement Agreement and the release, Ms. Marlett was appointed administratrix of the Decedent's estate. In the course of performing her duties as administratrix, Ms. Marlett asked Mr. Thomason to provide her any information that he had regarding any financial accounts owned by the Decedent at the time of her death. In response, on March 10, 2003, Mr. Thomason mailed a letter to Ms. Marlett which identified for the first time four financial accounts owned by the Decedent at the time of her death. He listed the names of the four financial institutions at which the accounts were located, but stated that he could not recall the balances in the accounts at the time of the Decedent's death.

Shortly after receiving this letter, Ms. Marlett contacted the financial institutions identified by Mr. Thomason. She discovered that, between February 5, 1997 and January 1, 1999, Mr. Thomason was added as a joint owner on four financial accounts titled in the Decedent's name: a $70,000 certificate of deposit at Farmers & Merchants Bank, an $80,000 certificate of deposit at AmSouth Bank, a $100,000 certificate of deposit at Union Planters Bank, and a $74,079.53 certificate of deposit at Legends Bank. This discovery led to the instant litigation.

On October 9, 2003, Ms. Marlett, as administratrix of the Decedent's estate, filed a lawsuit in the trial court below against Mr. and Mrs. Thomason, seeking to bring the four financial accounts into the estate for distribution to the Decedent's intestate heirs. In the complaint, Ms. Marlett alleged that at the time Mr. Thomason's name was added to the accounts, the Decedent was particularly susceptible to undue influence and suffered from failing health and memory. She also alleged that Mr. Thomason used fraud, deceit, and undue influence, to convert and conceal the Decedent's assets.

Attached to the complaint was Ms. Marlett's affidavit, recounting her version of the events that occurred between 1996 and 2003. According to the affidavit, Ms. Marlett visited the Decedent

in September 1996. At that time, she discovered that the Decedent was "seriously ill and mentally infirm[]." Ms. Marlett claimed that, by the time the Decedent moved to the Spring Meadows nursing home in 1999, she had become incontinent and was suffering memory loss. The affidavit asserts that Ms. Marlett visited the Decedent three to four times a year and regularly called Mr. Thomason to inquire about the Decedent's health.

In the affidavit, Ms. Marlett avers that, each time she talked with Mr. Thomason, she offered to help. During a phone call in early 2000, she maintains, Mr. Thomason responded by telling her that she could help by sending money to facilitate the sale of the Decedent's home. Ms. Marlett alleged that she asked Mr. Thomason about the Decedent's assets, and he told her that he had used all of the Decedent's assets to pay for her medical care and nursing home expenses. The affidavit claims that, during the year 2000, Mr. Thomason told Ms. Marlett on several occasions that the Decedent needed financial assistance. Ms. Marlett also contends that, after the Decedent died but prior to the parties entering into the Settlement Agreement, Mr. Thomason told her on three or four occasions that "there was no money left."

In response to the complaint, Mr. and Mrs. Thomason filed separate answers, in which both denied Ms. Marlett's allegations and asked the trial court to dismiss the complaint.[4] Subsequently, Mr. Thomason, on August 23, 2005, and Mrs. Thomason, on August 30, 2005, filed motions for leave to amend their answers. The motions set forth two affirmative defenses, the first based on the statute of limitations set forth in section 28-3-105 of the Tennessee Code Annotated and the second based on the Settlement Agreement, and in particular the release provision, entered into by the parties on August 27, 2002. The trial court granted the leave to amend to assert these defenses. Discovery ensued.

On October 20, 2005, Mr. Thomason filed a motion for summary judgment relying on the two affirmative defenses noted above. Mr. Thomason first argued that the claims against him were essentially claims of conversion, which were barred by the three-year statute of limitations set forth in section 28-3-105 of the Tennessee Code Annotated.[5] Mr. Thomason asserted that his name was added to the Decedent's financial accounts during the time period between February 5, 1997, and a date prior to January 1, 1999. Because the instant lawsuit was filed in October 2003, more than three years after his rights in the four financial accounts were established, Mr. Thomason averred that the lawsuit was barred by the statute of limitations.

Mr. Thomason next argued that Ms. Marlett's lawsuit was barred by the terms of the Settlement Agreement and release, executed by the parties on August 27, 2002. Mr. Thomason contended that the Agreement included a "general release" and was supported by valid consideration,

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[4] Before filing his answer, Mr. Thomason also filed a motion to have a guardian ad litem appointed for Mrs. Thomason, alleging that she suffered from dementia and memory loss. The trial court entered an order on November 17, 2003, granting Mr. Thomason's motion.

[5] This statute provides that claims "for the detention or conversion of personal property" must be brought within three years from the accrual of the cause of action. T.C.A. § 28-3-105.

including but not limited to Mr. Thomason's forbearance from probating the Decedent's April 6, 1999 will leaving the bulk of the Decedent's estate to him. He asserted that the language in the release provision clearly and unambiguously showed that the parties intended to release all claims, known or unknown, relating to the distribution of the Decedent's estate. He contended that the instant lawsuit fell squarely within the scope of the general release in the Settlement Agreement and was therefore barred.

On November 28, 2005, Ms. Marlett filed a response to Mr. Thomason's motion for summary judgment. Responding to the statute of limitations defense, Ms. Marlett first argued that the estate's cause of action did not begin to accrue until Mr. Thomason divested the Decedent and her estate of the financial assets at issue, which occurred after the Decedent's death. Therefore, she maintained, the lawsuit was filed within the three-year limitations period. Ms. Marlett also contended that the Decedent was in "frail health" and suffered from mental disabilities when Mr. Thomason's name was added to her financial accounts. Thus, she argued, even if the cause of action arose when Mr. Thomason's name was added to the accounts, the Decedent's mental incapacity tolled the statute of limitations until her death, i.e., when the mental disability was removed.

As to the release, Ms. Marlett contended that it did not constitute a "global release of all claims" relating to the Decedent's estate. Ms. Marlett argued that the Agreement was a compromise of a specific, disputed claim regarding the validity of the Decedent's April 6, 1999 will. She noted that the Agreement referenced specific items of personalty that Mr. Thomason was to receive and, in turn, Mr. Thomason waived his rights to any remaining assets of the estate. She emphasized that the Agreement did not include any information on the financial accounts and that she, at the time of signing, had no knowledge of them. Therefore, Ms. Marlett concluded, because the four financial accounts were not within the contemplation of the parties at the time the Agreement and release were executed, the release did not cover claims relating to the accounts.

On December 5, 2005, the trial court entered an order on Mr. Thomason's motion for summary judgment. On Mr. Thomason's argument that the lawsuit was barred by the three-year statute of limitations, the trial court found that there were genuine issues of material fact as to the mental competency of the Decedent and so denied summary judgment on that theory. It did, however, find that the claims of the estate were covered by the release executed by Ms. Marlett as part of the Settlement Agreement, and granted summary judgment to Mr. Thomason on that basis.[6]

Ms. Marlett, as administratrix of the Decedent's estate, now appeals. The sole issue presented on this appeal is whether the trial court erred in granting Mr. Thomason's motion for summary judgment based on the affirmative defense of compromise, settlement, and release.

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[6]The trial court also granted summary judgment in favor of Mrs. Thomason, finding that the estate's claims against her were derivative of those against her husband. Mrs. Thomason did not file a separate brief on this appeal, but instead relies on the brief of her husband, Mr. Thomason.

The trial court's decision to grant a motion for summary judgment presents a question of law. ***Mooney v. Sneed***, 30 S.W.3d 304, 306 (Tenn. 2000). Our review, therefore, is *de novo* upon the record with no presumption of correctness. ***Bain v. Wells***, 936 S.W.2d 618, 622 (Tenn. 1997). Summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; ***Penley v. Honda Motor Co.***, 31 S.W.3d 181, 183 (Tenn. 2000).

In reviewing the record, we "view the evidence in the light most favorable to the nonmoving party and . . . draw all reasonable inferences in the nonmoving party's favor." ***Staples v. CBL & Assocs., Inc.***, 15 S.W.3d 83, 89 (Tenn. 2000). Where the "facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." ***Seavers v. Methodist Med. Ctr.***, 9 S.W.3d 86, 91 (Tenn. 1999); ***see also Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn. 1995). If, however, "there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied." ***Byrd v. Hall***, 847 S.W.2d 208, 211 (Tenn. 1993); ***see also Poore v. Magnavox Co.***, 666 S.W.2d 48, 49 (Tenn. 1984).

On appeal, Ms. Marlett argues that there is a genuine issue of material fact regarding the parties' intent and what was within their contemplation when the Settlement Agreement and release was executed on August 27, 2002. Ms. Marlett argues first that the release does not constitute a "global release of all claims" relating to the Decedent's estate. Rather, she insists, the Agreement settled a single, disputed claim and covered only the items of real and personal property specifically referenced in it. Ms. Marlett further contends that, because of the circumstances surrounding the execution of the Agreement, namely Mr. Thomason's withholding of information regarding the approximately $350,000 in financial accounts, there is a genuine issue of fact as to the parties' intentions and as to what was within their contemplation at the time of execution of the Agreement and release. On this basis, she maintains that this is not an appropriate case for summary judgment.

In resolving a dispute, the parties may agree to a release which discharges a right of action that one party has or might have against the other party. ***See, e.g., Burks v. Belz-Wilson Properties***, 958 S.W.2d 773, 776 (Tenn. Ct. App. 1997) ("[R]eleases . . . are valid in Tennessee and are not against the public policy of this state."). A general release covers all claims in existence and within the contemplation of the parties at the time of execution, while a limited release covers only particular matters or claims that would fairly come within the terms of the agreement. ***J.D. Evans v. Tillet Bros. Const. Co.***, 545 S.W.2d 8, 11 (Tenn. Ct. App. 1976).

A release is considered a contract and the rules of contract construction are applicable. ***Richland Country Club, Inc. v. CRC Equities, Inc.***, 832 S.W.2d 554, 557 (Tenn. Ct. App. 1991). As with any contract, in construing a release, the "cardinal rule . . . is to ascertain the intention of the parties and to give effect to that intention, consistent with legal principles." ***Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.***, 521 S.W.2d 578, 580 (Tenn. 1975) (citing ***Petty v. Sloan***, 277 S.W.2d 355 (Tenn. 1955)). As such, the scope and extent of a release generally depends on the intent of the parties as expressed in the agreement. ***Cross v. Earls***, 517 S.W.2d 751, 752 (Tenn.

1974). This Court has previously discussed the rules of construction employed to determine the effect of a release:

> In interpreting a release to determine whether a particular claim has been discharged, the primary rule of construction is that the intention of the parties shall govern, and this intention is to be determined with a consideration of what was within the contemplation of the parties when the release was executed, which in turn is to be resolved in the light of all of the surrounding facts and circumstances under which the parties acted.

Jackson v. Miller, 776 S.W.2d 115, 118 (Tenn. Ct. App. 1989) (quoting 66 Am.Jur.2d *Release* § 30 (1973)); ***see also Burks***, 958 S.W.2d at 776; ***Richland Country Club***, 832 S.W.2d at 557. Thus, the surrounding circumstances under which the agreement was made should be considered. ***See, e.g.***, ***Richland Country Club***, 832 S.W.2d at 557 (finding that the "circumstances surrounding the execution . . . , the situation of the parties, the business to which the agreements related, . . . and the subject matter of the agreements in general should have been considered in construing the effect of the release"); ***Jackson***, 776 S.W.2d at 118 (stating that "the Court should consider all of the surrounding circumstances" in determining the parties' intent and contemplation).

Also, as indicated above, a general release ordinarily covers only "such matters as may fairly be said to have been within the contemplation of the parties when it was given." ***Jackson***, 776 S.W.2d at 118 (citing 76 C.J.S. *Release* § 52 (1952)). A corollary to this principle is that a claim "of which a party was ignorant when the release was given is not as a rule . . . embraced therein." ***Id.***; ***see also Bunch v. Lloyd***, No. 03A01-9708-CV-00331, 1998 WL 102109, at *3 (Tenn. Ct. App. Feb. 27, 1998). This is particularly true "where the releasor's ignorance of the claims in question is due to the releasee's concealment of them." 76 C.J.S. § *Release* 66 (1994).

In the case at bar, the parties entered into the Settlement Agreement and release in order to resolve the dispute regarding the validity of the April 1999 will, which purported to leave virtually all of the Decedent's assets to her brother, Mr. Thomason. The document states, however, that it was intended to "compromise and settle all claims and causes of action of any kind whatsoever . . . relating to the validity of the Last Will and Testament . . . or relating to the distribution of [the Decedent's] estate." The release provision releases "any and all claims, demand, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted in the above case, as of this date, arising from or related to the events and transactions which are the subject matter of this cause." Thus, the release language is general indeed, reflecting an intent to release all claims within the parties' contemplation and in existence at the time of execution, which relate to the distribution of the Decedent's estate.

As noted by Mr. Thomason on appeal, the Settlement Agreement specifically refers to the existence of financial accounts owned by the Decedent at the time of her death, stating that, "[Mr.] Thomason shall also provide [Ms. Marlett] with an accounting of the financial accounts" of the Decedent. Thus, Mr. Thomason argues, the financial accounts were within Ms. Marlett's

contemplation when she signed the Agreement, and she cannot "avoid the effect of the release because she may have mistakenly assumed that [the Decedent's] accounts were less substantial than they turned out to be."

In this appeal, we are obliged to review the entire record in a light most favorable to the nonmoving party, Ms. Marlett. In this case, Ms. Marlett alleges that, as early as 2000, Mr. Thomason falsely represented to her on several occasions that the Decedent was in dire need of financial assistance. In her affidavit, Ms. Marlett recounts a specific instance in which Mr. Thomason told her that she could help by sending money to assist him in selling the Decedent's home. She alleges that she then inquired into the Decedent's financial status, and Mr. Thomason responded by making a false statement that he had used all of the Decedent's assets to pay for her medical care and nursing home expenses. At the time these statements were allegedly made, Mr. Thomason was a joint signatory on four financial accounts owned by the Decedent, with a total value of approximately $350,000.[7]

In addition, Ms. Marlett recounts three or four instances which occurred after the Decedent died but prior to the parties' execution of the Settlement Agreement and release, in which Mr. Thomason allegedly indicated to her that the Decedent had "no money left." Mr. Thomason does not dispute this in his deposition:

> [Counsel]: . . . Did you tell [Ms. Marlett] at one point that there wasn't any money, that [the decedent] was broke?
> [Mr. Thomason]: She never asked that question until after [the decedent] was dead. And she didn't have any after she died.
> [Counsel]: Why didn't she?
> [Mr. Thomason]: Because it was a joint account.
> [Counsel]: Because it all moved into your name?
> [Mr. Thomason]: That's true.
> [Counsel]: Did you tell Ms. Marlett that?
> [Mr. Thomason]: I assume I did. I don't know.
> [Counsel]: You don't recall if you did or didn't?
> [Mr. Thomason]: I don't know if I did. I do recall telling her [the decedent] didn't have any money in those accounts.

Thus, Mr. Thomason apparently rationalizes telling Ms. Marlett that the Decedent had no money in the four financial accounts on the basis that the Decedent could not have had any money "after she died."

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[7] Mr. Thomason acknowledges that he accompanied the Decedent to the banks when she added his name to her accounts, but claimed that he did not become aware of the amounts in the accounts until he started receiving her bank statements at his home. This occurred when the Decedent was living with Mr. Thomason and his wife, either between November 1996 and May 1998 or between March 1999 and July 1999.

Under these circumstances, there is clearly a genuine issue as to whether Ms. Marlett's ignorance of claims by the estate to the moneys in the four financial accounts was due to Mr. Thomason's concealment and active misrepresentation of the fact that the accounts contained substantial amounts. ***See*** 76 C.J.S. *Release* § 66. As previously noted, the release contains broad language, releasing "any and all claims . . . known or unknown, . . . arising from or related to" the Decedent's estate. Despite the generality of the language, however, the terms of a general release will not be construed to encompass claims of which the releasor is ignorant due to the releasee's concealment of them. ***See, e.g., Forry Inc. v. Neundorfer, Inc.***, 837 F.2d 259, 262-63 (6th Cir. 1988) ("It has . . . been held that general language of [a] release will not encompass claims of which the releasor was unaware, particularly if the releasee concealed them from him.");[8] ***cf. Taylor v. Liberty Mutual Insurance Co.***, No. 01-A-01-9210-CV00420, 1994 WL 24311, at *4 (Tenn. Ct. App. Jan. 26, 1994) ("Courts will . . . decline to enforce written contracts when the party seeking to enforce the contract has induced the other to sign . . . by using some stratagem, trick, or artifice.").

From our review of the entire record, therefore, we must conclude that a genuine issue of material fact exists with regard to whether resolution of the estate's claims to the moneys in the four financial accounts was within the parties' contemplation when the Settlement Agreement and release was executed on August 27, 2002, and whether these claims are within the intended scope and extent of the release.[9] While it may later be determined that the claims as to the four accounts were within the parties' contemplation, we cannot at this juncture make that determination as a matter of law. ***J.D. Evans v. Tillet Bros. Const. Co.***, 545 S.W.2d 8, 11 (Tenn. Ct. App. 1976). As previously stated by the Tennessee Supreme Court:

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[8] In ***Forry Inc. v. Neundorfer, Inc.***, the Sixth Circuit ruled that a general release signed by the parties did not bar a subsequent claim of copyright infringement. ***Forry***, 837 F.2d at 261. The general release in that case released "any and all claims . . . of any nature whatsoever, *whether or not now known*" and relating to "any right, title or interest in and to any product presently manufactured by" the defendant. ***Id.*** at 263 (emphasis added). The court refused to hold that the general language of the release covered the infringement action because it found that the defendant, prior to signing the release, concealed the fact that it was manufacturing the product at issue. ***Id.*** at 263-64.

[9] The parol evidence rule may be an issue in this case on remand. "In its simplest form the rule provides: 'Parol evidence cannot be received to vary, add to, detract from, or contradict the terms of the document, or to modify its legal import.' " ***Richland Country Club, Inc. v. CRC Equities, Inc.***, 832 S.W.2d 554, 558 (Tenn. Ct. App. 1991) (quoting ***Freeze v. Home Federal Savings & Loan Assn.***, 623 S.W.2d 109, 112 (Tenn. Ct. App. 1981)). Particularly with a release, however, the terms of the release and the circumstances surrounding its execution are used to determine the intent of the parties. In this context, therefore, extrinsic proof of surrounding circumstances is admissible, especially where it tends to explain, rather than contradict, the terms of the document. ***See, e.g., Richland Country Club***, 832 S.W.2d at 557-59. We also note that there are numerous exceptions to the parol evidence rule. ***See id.*** (citing ***Hines v. Wilcox***, 33 S.W. 914 (Tenn. 1986)). Under certain circumstances, parol evidence may be admitted to show fraudulent inducements or misrepresentations in the entering of a contract. ***See, e.g., Hines***, 33 S.W. at 915-16 (listing several exceptions to the parol evidence rule); ***see also Gibson County v. Fourth & First Nat. Bank***, 96 S.W.2d 184, 190 (Tenn. Ct. App. 1936) (same). It is unclear whether the complaint at this time includes a claim that Mr. Thomason fraudulently induced Ms. Marlett to execute the Settlement Agreement and release, and it is unnecessary for us to address this issue in this appeal.

> When a material fact is in dispute creating a genuine issue, when the credibility of witnesses is an integral part of the factual proof, or when evidence must be weighed, a trial is necessary because such issues are not appropriately resolved on the basis of affidavits.

Byrd v. Hall, 847 S.W.2d 208, 216 (Tenn.1993). Accordingly, we must reverse the trial court's grant of summary judgment in favor of the Thomasons.

The decision of the trial court is reversed and the case is remanded for further proceedings not inconsistent with this Opinion. Costs of this appeal are to be taxed to Defendant/Appellee William Blake Thomason and Defendant/Appellee Opal Thomason, for which execution may issue, if necessary.

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HOLLY M. KIRBY, JUDGE